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AUG 27 2009

OFFICE OF PETITIONS

In re Application of :
Burgaud et al. :
Application No. 10/611,968 : LETTER REGARDING
Filed: July 3, 2003 : PATENT TERM ADJUSTMENT
Atty Docket No. 06028.0020-00 :

This letter is in response to the "NOTICE OF POSSIBLE PTO ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT AND REQUEST FOR REVIEW OF CALCULATION" filed June 22, 2009. Pursuant to their duty of good faith and candor to the Office, applicants note that the seven hundred eighty-seven (787) days of Patent Term Adjustment indicated on the Notice of Allowance mailed May 15, 2009 disagrees with their own calculation.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is seven hundred fifty-six (756) days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On May 15, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 787 days. Applicants state the Patent Term Adjustment on the Notice of Allowance disagrees with their calculation because the Office erroneously entered an October 29, 2003 mail date, rather than the correct mail date of September 29, 2003, for a Notice to File Missing Parts of Nonprovisional Application in the Office's Patent Term Adjustment History.

A review of the record reveals that the initial determination of patent term adjustment of 787 days is incorrect. Pursuant to 37 CFR 1.704(b), a period of reduction of 91 days, rather than 60 days, should have been entered in connection with March 29, 2004 reply to the September 29, 2003 Notice to File Missing Parts of Nonprovisional Application. 37 CFR 1.704(b) provides that:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

In this instance, applicants did fail to engage in reasonable efforts to conclude processing of the application by failing to reply to the Notice to File Missing Parts of Application mailed September 29, 2003 within the three-month period provided for in 37 CFR 1.704(b). Applicants did not file a complete and proper response until March 29, 2004. Accordingly, a period of reduction of 91 days is being entered for the period beginning on December 30, 2003, the day after the date that is three months after the date of mailing of the Notice, and ending on March 29, 2004, the date applicants' reply was filed.

In view thereof, the determination of Patent Term Adjustment at the time of the mailing of the notice of allowance is seven hundred fifty-six (756) days (998 days of Office delay reduced by 242 (91+ 62+89) days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Shirene Willis Brantley at (571) 272-3230.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish extending from the end of the name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PALM calculation

Day : Wednesday

PALM INTRANET

Date: 8/26/2009

Time: 17:19:59

PTA Calculations for Application: 10/611968

Application Filing Date:	07/03/2003	PTO Delay (PTO):	998
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	211
Post-Issue Petitions:	0	Total PTA (days):	756
PTO Delay Adjustment:	-31		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
83	08/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		91	
82	08/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	60		
72	05/15/2009	MAIL NOTICE OF ALLOWANCE			
71	05/13/2009	ISSUE REVISION COMPLETED			
70	05/13/2009	DOCUMENT VERIFICATION			
69	05/13/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
68	05/13/2009	EXAMINER'S AMENDMENT COMMUNICATION			
67	05/13/2009	NOTICE OF ALLOWABILITY			
66	05/01/2009	MAIL BPAI DECISION ON APPEAL - REVERSED	680		41
65	04/30/2009	BPAI DECISION - EXAMINER REVERSED			
64	03/18/2009	CONFIRMATION OF HEARING BY APPELLANT			
63	02/26/2009	NOTIFICATION OF APPEAL HEARING			
61	12/04/2008	DOCKETING NOTICE MAILED TO APPELLANT			
60	12/03/2008	ASSIGNMENT OF APPEAL NUMBER			
59	08/18/2008	APPEAL AWAITING BPAI DOCKETING			
58	04/23/2008	MAIL REPLY BRIEF NOTED BY EXAMINER			
57	04/23/2008	REPLY BRIEF NOTED BY EXAMINER			
56	04/21/2008	DATE FORWARDED TO EXAMINER			
55	01/18/2008	REPLY BRIEF FILED			
54	01/18/2008	REQUEST FOR ORAL HEARING			
53	12/11/2007	EXAM. ANS. REVIEW COMPLETE			
52	11/21/2007	MAIL EXAMINER'S ANSWER			
51	11/20/2007	EXAMINER'S ANSWER TO APPEAL BRIEF			
50	10/05/2007	CASE DOCKETED TO EXAMINER IN GAU			
49	09/28/2007	APPEAL BRIEF REVIEW COMPLETE			

48	09/28/2007	DATE FORWARDED TO EXAMINER			
47	09/06/2007	APPEAL BRIEF FILED			
46	09/06/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
45	08/08/2007	NOTICE -- DEFECTIVE APPEAL BRIEF			
44	07/17/2007	APPEAL BRIEF REVIEW COMPLETE			
43	07/17/2007	DATE FORWARDED TO EXAMINER			
42.1	06/22/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
42	06/22/2007	APPEAL BRIEF FILED			
41	06/22/2007	NOTICE OF APPEAL FILED			
40	03/22/2007	MAIL NON-FINAL REJECTION			
39	03/16/2007	NON-FINAL REJECTION			
38	03/08/2007	DATE FORWARDED TO EXAMINER			
37	03/01/2007	RCE- AF PROCESSED			
36	03/08/2007	DATE FORWARDED TO EXAMINER			
35	03/01/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
34	03/08/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
33	03/01/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
32	03/01/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
31	08/18/2006	MAIL ADVISORY ACTION (PTOL - 303)			
30	08/16/2006	ADVISORY ACTION (PTOL-303)			
29	08/10/2006	DATE FORWARDED TO EXAMINER			
28	08/04/2006	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
27	08/04/2006	NOTICE OF APPEAL FILED		89	25
26	08/04/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
25	02/07/2006	MAIL FINAL REJECTION (PTOL - 326)			
24	02/03/2006	FINAL REJECTION			
23	12/29/2005	DATE FORWARDED TO EXAMINER			
22	12/19/2005	RESPONSE AFTER NON-FINAL ACTION		62	20
21	12/19/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
20	07/18/2005	MAIL NON-FINAL REJECTION	318		-1
19	07/15/2005	NON-FINAL REJECTION			

18	04/08/2005	CORRESPONDENCE ADDRESS CHANGE			
17	04/20/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	04/20/2004	CASE DOCKETED TO EXAMINER IN GAU			
15.7	07/03/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	07/03/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	04/08/2004	APPLICATION RETURN FROM OIPE			
11	04/08/2004	APPLICATION RETURN TO OIPE			
10	04/07/2004	APPLICATION DISPATCHED FROM OIPE			
9	04/08/2004	APPLICATION IS NOW COMPLETE			
8	03/29/2004	ADDITIONAL APPLICATION FILING FEES		60	6
7	03/29/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
6	10/29/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	09/17/2003	CASE CLASSIFIED BY OIPE			
3	09/17/2003	CLEARED BY OIPE CSR			
2	09/04/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	07/03/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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